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No. 71-282

In the Supreme Court of the United States

OCTOBER TERM, 1971

ARNOLD STONEHILL AND MICHAEL GRUBER, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C., 20530.

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After a non-jury trial in the United States District Court for the Central District of California, petitioners were convicted on count two [1] of a three-count indictment charging them and two others with various sales of cocaine to federal agents, in violation of 26 U.S.C. (1964 ed.) 4705(a). They each were sentenced to five years' imprisonment. The court of appeals

[1] Count two of the indictment charged that petitioners and two others sold approximately 47 grams of cocaine to a federal agent in Los Angeles on December 2, 1969. Co-defendant Giorgio was also convicted on this count, and on count one of the indictment relating to a separate sale. All charges against co-defendant Sabin were dismissed after trial.

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affirmed *per curiam* (Pet. App. B), and, on June 31, 1971, denied a petition for rehearing. The petition for a writ of certiorari was filed on August 25, 1971, and is therefore out of time under Rule 22(2) of the Rules of this Court.

The evidence showed that on November 7, 1969, undercover narcotics agent Warren was introduced to co-defendant Giorgio in Hollywood, California, by an informant (Tr. 11–12).[2] Giorgio offered to sell an ounce of cocaine to Warren at $700 per ounce; when Warren said that he thought the price was a little high, Giorgio told him that it would be reduced if he would buy the cocaine in larger quantities (Tr. 13). Warren then expressed a desire to deal in pound quantities, but stated that he first wanted to make sure that Giorgio could provide ample ounces of good quality (Tr. 14). Giorgio assured Warren that he could, stating that he had been selling cocaine in the Hollywood-Beverly Hills area for a man who was originally from New York; that the man, who now lived in Hollywood, had been in the business for about fourteen years and traveled frequently between New York and Hollywood; and that this man had the cocaine sent out to him (Tr. 14). Warren then purchased the ounce of cocaine and handed Giorgio $700 (Tr. 14).

Approximately two weeks later, Warren again met with Giorgio and asked to purchase another two

[2] "Tr." refers to the transcript of the proceeding in the trial court, a copy of which we are lodging with the Clerk of this Court.

ounces of cocaine; Giorgio said he had been unable to get in touch with "his people" and asked Warren to wait. A meeting was then arranged between Agent Warren, Giorgio, and two men whom Giorgio referred to as his "connections" or "sources of supply" (Tr. 16).

This meeting took place on November 26, 1965. On that date, Warren and another federal agent met as planned with Giorgio and petitioners at a Pasadena restaurant (Tr. 16, 22). Warren informed petitioners that he had been advised by Giorgio that they were his source of supply and that if he wanted a good price on large quantities of cocaine he should talk with them (Tr. 18, 19, 51). Petitioner Gruber indicated that he could supply cocaine in any amount (Tr. 19) and would arrange transportation for the agents to New York in order that they could purchase the narcotics from his various contacts. Gruber emphasized, however, that the agents would have to deal through him personally (Tr. 20). Petitioner Stonehill then added that if the agents were going to distribute narcotics in the Hollywood area, "he would want Mr. Giorgio to have part of the action" (Tr. 21). With reference to any future purchase, the agents were told that they would have to "contact Mr. Gruber in New York through Giorgio" (Tr. 20).[3]

[3] Petitioner's involvement as Giorgio's contact was substantiated when co-defendant Sabin, at a later meeting with the agents, made statements to the effect that petitioners were in the cocaine trafficking business quite heavily, and that Giorgio was not the only person who was receiving cocaine from these two men (Tr. 34).

Stonehill assured the agents that he could deliver. He told them that the cocaine Giorgio had promised had not yet arrived but that it was in the mail from New York and was expected shortly (Tr. 22). When Stonehill questioned Giorgio about price, Giorgio said that he had gotten $700 per ounce for the first delivery to Warren, but that, if Stonehill approved, he would take $675 per ounce in the future (Tr. 21). On December 2, 1969, the two ounces of cocaine arrived and were sold by Giorgio to Warren at the $1,350 price agreed upon at the meeting (Tr. 24–25).

The trial court found that Giorgio was simply a "bag carrier," and that Stonehill and Gruber were guilty as principals (Tr. 123). Petitioners contend here, as they did below, that the evidence was insufficient to establish a factual nexus between them and co-defendant Giorgio since they were not physically present at the December 2 sale. But, the evidence detailed above, which petitioners do not dispute, clearly establishes petitioners' involvement in the offense charged and provides ample basis for the judgment of conviction on count two of the indictment. There is thus no cause for further review by this Court.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1971.